EVERETT

SPEECH OF MR. EVERETT, OF MASSACHUSETTS

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Mr EVERETT, OF MASSACHUSETTS,

IN THE HOUSE OF REPRESENTATIVES,

On the 14th and 21st of February, 1831,

ON THE EXECUTION OF THE LAWS AND TREATIES IN FAVOR OF THE INDIAN TRIBES.

[On Monday, 7th February, 1831, Mr E. Everett presented to the House of Representatives the petition of sundry citizens of Massachusetts, praying that the Indian Tribes may be protected in the rights secured to them by the laws of the United States, and the treaties subsisting between the United States and the said tribes. In presenting this memorial, Mr Everett observed, that he had long felt it to be the duty of the House to consider the all-important subject of this memorial. He should himself, by way of resolution, have called the attention of the House to the subject, had no other member expressed an intention of doing so, if it had been possible, under the rules of the House, to move a resolution. But it was known to the Chair that, for several weeks past, there had not been a moment when it was in order to move a resolution.* A petition from a very respectable community in the State which he had the honor, in part, to represent, had been placed in his hands. By the rules of the House, a petition cannot be debated on the day on which it is presented, but must lie on the table one day. As petitions are received only one day of the week—on Mondays—Mr E. observed that the memorial which he presented must, under these rules, lie on the table till that day, and then come up as the unfinished business of petitions. He begged leave, therefore, in presenting this petition, to give notice, that, when it should come up, on Monday next, he should feel it his duty to ask the attention of the House to the very important question of protecting the Indian Tribes, in the possessions and rights secured to them by treaty and laws of the United States.

On Monday, the 14th of February, the subject, according to this notice, came up. A motion was submitted by Mr Everett, that the petition should be referred to the Committee on Indian Affairs, with instructions to report a bill making further provision for executing the laws, relating to the intercourse of citizens of the United States with the Indian Tribes; and also for the faithful observance of the treaties between the United States and the said tribes.

This motion was supported by Mr Everett, in a speech delivered on the 14th and 21st of February, in substance as follows:]

Mr Speaker: In presenting this subject last week to the House, I observed, that it was with regret that I found myself obliged to bring it forward in a manner, strictly parliamentary indeed, but somewhat unusual. I should have preferred to submit this great subject to the consideration of the House by the more usual course of a resolution. I have had a resolution prepared for that purpose, and lying in my desk for several weeks; but the Chair knows that there has not been a moment, for several weeks, when a resolution could be offered but by the unanimous consent of the House. Such consent I could not ask on such a subject. I should have been better pleased to meet the subject on a report from the Indian Committee, to whom, in connexion with very numerous memorials from various parts of the country, with the President's Message, and with the petitions of the Creek and Cherokee Indians, it has been referred. No report, however, has proceeded from that committee, and no intimation has been given that any is to be expected.

In this state of things, urged by my sense of duty, admonished by several expressions of public sentiment committed to my charge by the people I represent, and looking upon the subject as one of great, of paramount—aye, sir, of most painful importance—a subject eminently requiring the interposition of this House,—I have felt myself constrained (in the for-

* The hour of the day assigned to resolutions being pre-occupied with the discussion of another subject.

bearance of others much better qualified to take this step) to make this effort to bring it under the consideration of the representatives of the People.

I should think, sir, that a positive decision of this question by Congress would be highly desirable to the friends of the Administration. They cannot, I should think, wish to leave with the Executive the responsibility of sitting still and witnessing the violation of a very large number of treaties and compacts, and of the clearest provisions of law. No man surely can pretend that such a policy can be within the competence of the Executive; and if, for reasons of necessity, or reasons of State, or any other reasons, the treaties with the Indians are to be annulled, and the laws touching our intercourse with them converted into a dead letter, it surely cannot require an argument to prove, that Congresss is the only power by which this can be done with any show of rightful authority.

I cannot disguise my impression, that it is the greatest question which ever came before Congress, short of the question of peace and war. It concerns not an individual, but entire communities of men, whose fate is wholly in our hands, and concerns them not to the extent of affecting their interests, more or less favorably, within narrow limits. As I regard it, it is a question of inflicting the pains of banishment from their native land on seventy or eighty thousand human beings, the greater part of whom are fixed and attached to their homes in the same way that we are. We have lately seen this House in attendance, week after week, at the bar of the other House, while engaged in solemn trial of one of our own functionaries, for having issued an order to deprive a citizen of his liberty for twenty-four hours. It is a most extraordinary and astonishing fact, that the policy of the United States toward the Indians—a policy coeval with the Revolution, and sanctioned in the most solemn manner on innumerable occasions—is undergoing a radical change, which, I am persuaded, will prove as destructive to the welfare and lives of its subjects as it will to their rights; and that neither this House, nor the other House, has ever, even by resolution, passed directly upon the question.

But it is not merely a question of the welfare of these dependent beings, nor yet of the honor and faith of the country which are pledged to them—it is a question of the Union itself. What is the Union? Not a mere abstraction; not a word; not a *form* of *Government*; it is the undisputed paramount operation, through all the States, of those functions with which the Government is clothed by the Constitution. When that operation is resisted, the Union is in fact dissolved. I will not now dwell on this idea; but the recent transactions in Georgia have been already hailed in the neighboring British provinces as the commencement of that convulsion of these United States, to which the friends of liberty throughout the world look forward with apprehension, as a fatal blow to their cause.

If any further apology were needed for bringing this matter before the House, it might be the fact that it has been frequently referred to us. It has formed a prominent topic in the two annual communications of the Chief Magistrate. Numerous memorials on both sides of the question have presented it to us; reports in both Houses of Congress have discussed it; but owing to some strange fatality it has never been plainly and decidedly met.

The Secretary of War tells us that a new era has within a few years arisen in relation to our Indian affairs. He does not indicate precisely what marks the new era; but in one respect there has unquestionably arisen a new era in this department, that of substituting Executive decision for Congressional enactment. Formerly, the Executive only carried into effect our laws and treaties made by the treaty-making branch of the Government. Now the President, 1st, permits the States to annul the treaties, and to proceed on their declared want of validity; and, 2d, annuls the laws himself, and permits his Secretary to come down to Congress, with an argument to prove that a law substantially coeval with the Government is unconstitutional. I am willing to receive the Secretary's argument for what it is worth; but really, sir, I have studied the Constitution unsuccessfully, if the mere opinion of a Secretary, with or without an argument, renders a law unconstitutional, and makes it cease to be obligatory. But to this I shall return, repeating only now, that the assumption of these two principles in our Indian affairs does, indeed, constitute a new era.

Sir, I know the delicacy of this subject. I approach it with reluctance and pain, under the most imperious sense of duty. I would gladly have put it by, could I have justified myself in so doing. I know, by past experience, the odium I am to incur. I know that, humble as I am, the denunciations of hundreds of presses throughout the country await me. I have seen within a week, in a paper published at this place, and which has been made the channel of the most confidential communications between the President and the People; I have seen the course of the minority of this House who voted on the Indian bill last year—a minority comprising some of the most respectable friends of the President, and amounting to very nearly one-half of the House—ascribed to *vile faction*.

But, disagreeable as the consequence may be, to one who loves strife as little as I, I cannot keep silence, when I hear the laws of the land declared unconstitutional, by those executive officers who have no other duty in reference to the laws, but to enforce them; when I see treaties violated by States who are parties to them; treaties sanctioned by all the forms of the Constitution, and ratified by the Senators representing the very States foremost in the violation. I cannot keep silence when I see the Constitution invaded; the honor of the

country tarnished; the Union impaired. If my whole course during the six years that I have been honored with a seat on this floor, will not protect me in the judgment of others from the imputation of vile and factious motives; I shall have at least the consciousness in my own bosom, that a sense of public duty, and that alone, has impelled me to the course I have taken.

Sir, the Secretary says a new era has arisen in our Indian affairs. This is true. Up to the year 1828, the course of proceeding in our Indian affairs is well known, at least in reference to all the tribes, whose rights are now in controversy. The United States had negotiated treaties with all the Southwestern tribes. Our relations with them and the boundary between them and us were regulated by treaty; and by the Intercourse law framed in pursuance of the same policy. A limited and qualified sovereignty, sufficient to enable them to contract these treaty obligations, was conceded to the tribes. No State had pretended to extend her laws over either of these tribes till the year 1828. To show the various views entertained of this subject, I will cite several authorities, which will abundantly sustain me in this position. The distinguished individuals whom I quote, and the present chief magistrate at the head of them, took views somewhat different from each other, but none of them, I believe, intimated, that the separate States possess the right now claimed.

In 1821, the Creek Path Indians being dissatisfied with the conduct of their brethren of the upper towns, applied to General Jackson, then Major General of the Southern division, requesting him to use his influence with the General Government to procure for the said Creek Path Indians an inalienable reservation of a part of their lands, on consideration of selling their proportionate share of the common lands of the Nation.

General Jackson was in favor of this project, and wrote to Mr. Calhoun, then Secretary of War, as follows:

"I do believe, in a political point of view, as well as in justice to these people, their prayer ought to be noticed. It is inviting *Congress* to take up the subject, and exercise its power, *under the Hopewell treaty*, of regulating *all* the Indian concerns as it pleases. This is a precedent much wanted, that the absurdity in politics may cease of an independent sovereign nation, holding treaties with people living within its territorial limits, acknowledging its sovereignty and laws, and who, although not citizens, cannot be viewed as aliens, but as real subjects of the United States." Here the right of legislating for the Indians is claimed, not for the States, but for the United States; and this under the treaty of Hopewell, a treaty negotiated before the adoption of the Federal Constitution, and containing the amplest guaranties of the rights of the Cherokees.

In treating with the Cherokee Indians in 1823, Messrs. Campbell and Meriwether, citizens of Georgia, animated by a strong zeal for the acquisition of Indian lands, use this language: "The sovereignty of the country, which you occupy, is in the United States alone; no *State* or foreign power can enter into a compact with you. These privileges have passed away, and your intercourse is restricted exclusively to the United States."

In the year 1824, March 10th, the Cherokees are spoken of, in the following manner, in a letter addressed by the Senators and Representatives of Georgia, to the Secretary of War:

If the Cherokees are "to be viewed as *other Indians*, as persons suffered to reside within the territorial limits of the United States; *and subject to every restraint, which the policy and power of the General Government require to be imposed on them*, for the interest of the Union, the interest of the particular States and their own preservation, it is necessary that these misguided men should be taught by the General Government, that *there is no alternative between their removal beyond the limits of the State of Georgia and their extinction.*"

In 1824 Judge White, now the distinguished Senator from Tennessee, gave an opinion, in which he expressed himself as follows:

"Under the parental care of the Federal Government, the Cherokees have been in a good degree reclaimed from their savage state. Under their patronage, they have become enlightened; they have acquired a taste for property of their own, from the use of which they can exclude all others; they have acquired the property itself. There must be laws to protect it, as well as to protect those who own it. By what community ought these laws to be enacted? Laws there have always been, and laws there must continue to be, emanating from some powers capable of enacting them. Where is that power? It must be in Congress, or in the Cherokees. Congress has never exercised it, the Cherokees always have. *I have never heard that their power was doubted.*"

Governor Troup, in 1825, March 25th, issued a Proclamation, from which the following is an extract:

"Whereas it is provided in said treaty, that the United States shall protect the Indians against the encroachments, hostilities, and impositions, of the whites, so that they suffer no interruption, molestation, or injury, in their persons, goods, effects, their dwellings, or the lands they occupy, until their removal shall have been accomplished, according to the terms of the treaty:

"I have therefore thought proper to issue this my proclamation, warning all persons, citizens of Georgia, or others, against trespassing or intruding upon lands occupied by the Indians, within the limits of this State, either for the purpose of settlement or otherwise, as

every such act will be in direct violation of the provisions of the treaty aforesaid, and will expose the aggressors to the most certain and summary punishment, by the authorities of the State and the United States.

"All good citizens, therefore, pursuing the dictates of good faith, will unite in enforcing the obligations of the treaty, *as the supreme law*," &c.

Governor Troup, being exceedingly desirous to hasten the survey of the lands, acquired by the treaty of the Indian Springs, asked permission to survey them, of General M'Intosh, the Chief of the emigrating party, as a necessary preliminary.

In 1826, a Senator from Mississippi, now deceased, (Mr. Reed,) disclaimed any right, on the part of the State, to extend her jurisdiction over the Indians. "At the last session, said he, of the Legislature of Mississippi, a proposition was made to extend the civil power of their courts to their own citizens, who had contracted debts within the State, and had fled to this savage sanctuary. The matter was debated many days, and it was at last decided that there existed no power in the State, to extend its laws in the manner sought by the proposition."

These authorities, I think, will abundantly prove that the claim of the Southern States to exercise jurisdiction over tribes, with whom there are existing treaties, forms a new era. Whether it be that to which the Secretary of War alludes, I pretend not to decide.

While the Secretary of War announces this new era, the President in his Message at the opening of the Session informed us, that "the benevolent policy of the Government, *steadily pursued for nearly thirty years*, in relation to the removal of the Indians beyond the white settlements, is approaching to a happy consummation." This statement appears to me at variance with that, which was made in the annual message of the last year. In that document we were told, that "it has long been *the policy of Government* to introduce among Indians the arts of civilization, in the hope of gradually reclaiming them from a wandering state." This is certainly a benevolent policy: and this is the policy, which has been steadily pursued for nearly thirty years. But last year, the President added: "this policy has, however, been coupled with *another, wholly incompatible with its success*. Professing a desire to civilize and settle them, we have, at the same time, lost no opportunity to purchase their lands, and thrust them further into the wilderness. By this means, they have not only been kept in a wandering state, but have been led to look upon us as unjust and indifferent to their fate. Thus, though lavish in its expenditures on the subject, *Government has constantly defeated its own policy*."

Last year the benevolent policy of settling and civilizing them had been thwarted by another, that of removal to the west, declared to be incompatible with its success. This year the removal to the west is declared to be the benevolent policy, which has been steadily pursued. In my judgment, the view taken in the message of last year is the sounder.

But the policy of removal has, I grant, been pursued steadily for thirty years, but never *in the same manner*, as now. It was never thought of, that all the treaties and laws of the United States protecting the Indians could be annulled, and the laws of the States extended over them; laws of such a character that it is admitted, nay urged, that they cannot live under them. The policy of removal has been pursued by treaty, negotiated by persuasion, urgency, if gentlemen please, with importunity. But the *compulsion* of State legislation and of the withdrawal of the protection of the United States was never before heard of. If the President means that the policy of removal under this compulsion is thirty years old, I do not know a fact, on which his proposition can stand for a moment. However pursued, the policy of removal had been attended with limited success. Vast tracts of land had indeed been acquired of the southwestern tribes, but chiefly by bringing their settlements within narrower limits. Between the years of 1809 and 1819, about one-third of the Cherokees went over to Arkansas, and the hardships and sufferings encountered by them were a chief cause why their brethren, the residue of the tribe, resisted every inducement held out to persuade them also to emigrate. The Choctaws, by the treaty of Doak's Stand, acquired a large tract of country between the Red River and the Canadian; but would not in any considerable numbers emigrate to it. In 1826, a part of the Creeks were forced by the convulsions in that tribe to emigrate, under the treaty of that year. In 1828 the Choctaws and Chickasaws sent a deputation to explore the country west of Arkansas, which returned dissatisfied with its appearance.

While the policy of removal was going on with this limited success, that of civilization, the truly benevolent policy, was much more prosperous. The attempt to settle, to civilize, and to christianize some of these tribes succeeded beyond all example. If the accounts of their previous state of barbarism are not exaggerated, the annals of the world do not, to my knowledge, present another instance of improvement so rapid, within a single generation; unless it be that which has been effected, by a similar agency, in the Sandwich Islands, within the last ten years.

During all the time that these two processes were going on, that of removal (declared last year by the President to be inconsistent with civilizing them) with partial success; and that of settling and improving their condition, on this side of the Mississippi, in which the success had been rapid and signal, no attempt was made to encroach on their limited inde-

pendence. The right of the United States to treat with them was not questioned; the States never attempted to legislate over them; and the possessions and rights guarantied to them by numerous treaties were considered by them and by us, as safe beneath the protection of the National Faith. But at length, under the late administration of the General Government, the south-western States, taking advantage of the political weakness of that administration, seemed determined to adventure the experiment, how far they could go, to effect by a new course of State legislation, a revolution in the Indian policy of the country.

Georgia led the way. In 1828 she passed a summary law to take effect prospectively, extending her jurisdiction civil and criminal over the Indian tribes within her limits. In 1829 this law, with more specific provisions, was re-enacted, to take effect on the first day of June 1830. This example of Georgia was imitated by Alabama and Mississippi. By these State laws, the organization previously existing in the Indian tribes was declared unlawful, and was annulled. It was made criminal to exercise any function of Government under authority derived from the tribes. The political existence of these communities was accordingly dissolved, and their members declared citizens or subjects of the States. What a contrast, in two or three years! In 1826, after many days' debate, the Legislature of Mississippi decided, that it had no right to pass a law to pursue its own citizens, being fugitive debtors, into the Indian country. In 1829, the same State extends all its laws over the Choctaws, abrogates their Government, and denounces the punishment of imprisonment on any person who should exercise any office under the authority of the tribe.

The Indians, as was natural, looked to the Government of the United States for protection. It was the quarter whence they had a right to expect it; where, as I think, they ought to have found it. They asked to be protected in the rights and possessions guarantied to them by numerous treaties, and demanded the execution, in their favor, of the laws of the United States governing the intercourse of our citizens with the Indian Tribes. They came first to the President, deeming, and rightly, that it was his duty to afford them this protection. They knew him to be the supreme Executive Officer of the Government; that as such he had but one constitutional duty to perform toward the treaties and laws—the duty of executing them. The President refused to afford the protection demanded. He informed them, that he had no power, in his view of the rights of the States, to prevent their extending their laws over the Indians; and the Secretary of War, in one of his communications to them, adds the remark, that the President had as little inclination as power to do so.

When this decision of the President was taken, does not certainly appear. On the 23d day of March, 1829, he informed a Delegation of Creek Indians, that, if they remained, they must become subject to the law of Alabama. On the 11th of April, the superintendent of the Bureau of Indian Affairs, by direction of the Secretary of War, stated to the Cherokee Delegation, "That the Secretary of War is not now prepared to decide the question involved in the act of the Legislature of Georgia, to which you refer, in which provision is made for extending the laws of Georgia over your People, after the 1st June, 1830. It is a question which will doubtless be the subject of Congressional inquiry, and what is proper in regard to it will no doubt be ordered by that body.

"In regard to the act of Georgia, no remedy exists short of one which Congress alone can apply."

On the 18th of the same month, a letter of the Secretary of War, to the same delegation, tells them, in the most positive terms, that the Indians must submit to the State laws.

On the 14th October, the Secretary, writing to Governor Forsyth, uses this language: "At an early period, therefore, when this question arose, the Cherokees were given distinctly to understand that it was not within the competency or power of the Executive to call in question the right of Georgia to assert her own authority within her own limits, and the President has been gratified to witness the extent *to which a principle so reasonable in itself, and so vitally important to State Sovereignty, has received* the approbation of his fellow-citizens. This oft asserted and denied right being settled, on the side of the State, to the extent that Executive interference could go, it was expected and hoped that a little longer continuance of that forbearance which Georgia has so long indulged, was all that was wanted to assure to her the purposes and objects she had before her: and after a manner, too, to which philanthropy could take no exception."

Such was the fate of the question which was to be the subject of Congressional inquiry. In what way that popular sanction had been given, which the President appears to have taken in lieu of any legislative decision of this question, does not appear.

At the ensuing session of Congress, a memorial was presented to this House, signed by three thousand and eighty-five individuals of the Cherokee tribe. Another memorial was laid upon our tables from the Creeks. The subject was also presented to us in the annual message of the President, disclosing a state of facts which seemed to require, as well as to invite, the decisive action of Congress. Finally, the public mind was extensively awakened. Very numerous memorials, on the subject of the revolution which was going on in our Indian policy, were sent in to Congress. Some of these (and of this character was the *first* presented) approved the change: by far the greater part condemned it.

In this way the question of the right of the State to extend her laws over Indian tribes,

in contravention of treaties and the laws of the United States, was brought before Congress in the fullest and amplest manner. It was not, however, directly met. The President had, in the recess of Congress, declared that he could not and would not enforce the treaties and laws. The Secretary of War had almost sneered at the idea, that the Indians could possess rights under a treaty forty years old; as if the validity of a treaty were impaired by the length of time its provisions had been in force. But the treaties were still preserved in our archives. The intercourse law founded upon them still stood unrepealed on the Statute Book; and it appears to me that the proper way in which this question was to be met, would have been a proposition to repeal the laws and abrogate the treaties.

In my judgment there was an error in the first step taken by the President. He decided a question which he had no constitutional competency to decide. When the first movement was made by the States, he should have interposed to maintain the treaties and enforce the laws, and have referred the subject to Congress. What other power has the Executive over a treaty or a law but to enforce it? The principle assumed by the President and by the Secretary is, that whenever the Executive thinks a law unconstitutional he may forbear to execute it. Now, how will this operate on other questions? Suppose Mr. Adams had thought the compact of 1802 unconstitutional, (as it was held to be in this debate last winter by a Senator from Alabama) could he have refused to enforce it; could he have forborne to expend an appropriation granted to carry it into effect? The President has plainly intimated, that the Bank of the United States is unconstitutional. Is he thereby authorized to put it out of the pale of the law? A very respectable portion of the community regards the tariff as unconstitutional, and propositions have been made to annul it, by the authority of a State and within its limits. But who ever heard that the President and the Secretary of the Treasury might between them declare it unconstitutional, and as such null and void? The intercourse law was passed as it stands in 1802; the substance of it was enacted in 1791, and the Secretary of War, with the full concurrence of the President, lays his hand on this law, which is forty years old, tells us it is unconstitutional, and as such not obligatory.

Let us but consider the extravagance of this doctrine. The Constitution gives to the President a *veto* on an act of Congress in its passage, and if he withholds his signature it fails to become a law. But even without the sanction of his name, without the Executive concurrence which may be withholden on the very ground of unconstitutionality, the act becomes a law if two-thirds of Congress adhere to it. But of what use is this or any other limitation on the exercise of the President's *veto*, if he may annul any law and all the laws in the statute book, on the simple opinion that they are unconstitutional?

But what, it may be asked, is the President to do: how is he to proceed with an unconstitutional law? I answer this question, by asking another, how is he authorized to arrive at the conclusion, that a law is unconstitutional? Is he created by the Constitution, a functionary to pass on the unconstitutionality of laws? I can find no such power given him in the Constitution.

It is one thing for a law to be *ascertained and declared* unconstitutional, by the competent tribunal, and another thing for it to be *thought* unconstitutional, by any citizen or officer called on to obey or to enforce it.

The citizen is not bound to obey an unconstitutional law; for it is no law. But if he undertakes to disobey a law because, in his private judgment, it is unconstitutional, it is at his risk and peril; and it will not probably be long, before some process of law will teach him that he is not authorized finally to adjudicate such a question. An Executive officer, high or low, is certainly not bound to execute an unconstitutional law; but his simply thinking it to be unconstitutional is a very different affair.

Suppose a collector should think the tariff unconstitutional; could he forbear to collect the duty? Could the Secretary of the Treasury, holding the same opinion, remit the duty? Could the President direct his Secretary to remit it?

In the Government under which we live, a power is provided to pass on the constitutionality of laws. The President is not that tribunal. His office is executive. The opinion he holds of the constitutionality of a law, (except when called to sign it on its passage) he holds not officially but as any other citizen, at his peril; and as it is his sworn duty to execute the laws, if he refuses to execute a law, for whatever cause, he is guilty of a high breach of official duty, and commits an impeachable offence. It is the province of this House to hold him to his duty.

There is no end to the absurd consequences which would flow from an opposite principle. To what would it not lead? If the President may annul a law, which he thinks unconstitutional, the Secretary may annul another which he thinks unconstitutional; and so may any of his clerks. The clerk of your House may refuse to carry a bill which you pass to the Senate, if he thinks it unconstitutional; for in that case, it is no more a law, on this principle, than an old newspaper. And if gentlemen contend that they reserve to the President alone this dispensing power of refusing to execute laws, which in his private judgment are unconstitutional, they merely give us, instead of the anarchy which would arise from its being possessed by all the Executive officers, a perfect Oriental despotism produced, by imparting it to one.

We have heard a good deal said about nullification, and no small opprobrium attached

to the word. Has it never occurred to some gentlemen, willing enough to stigmatize *that* doctrine, that they themselves have lent their countenance to the same doctrine, not in theory alone, but in practice? Georgia orders a survey of the Cherokee lands. The law of 1802 makes it highly penal to survey lands belonging or secured to Indian tribes by treaty. It subjects those who transgress the law to a thousand dollars fine and twelve months' imprisonment, and authorizes the President to call out a military force to execute the law. The President tells all concerned that he will not enforce the law, because he thinks it unconstitutional. Is not that nullification? The convention of the Judges of Georgia decide all the Indian treaties to be unconstitutional. Is not that nullification? And yet, if I mistake not, propositions have been made in the quarter where this nullification is practised by wholesale, to censure the doctrine as theoretically advanced in a neighboring State.

I have remarked that the direct way to meet this question would have been to propose a law abrogating the treaties and repealing the intercourse law of 1802.

But a different course was pursued. A bill was presented, ably drawn and carefully worded, so as to leave this question entirely aside. Although the bill was an integral part of the policy of the States, designed to co-operate with it, and in fact built upon it as upon a foundation, it was so worded as not, in terms, to afford it any sanction. We were obliged to go to the President's Message, and to the reports of the committees of the two Houses of Congress, to ascertain its character. We did so; and we discussed the policy, as it discovered itself in those documents.

But, harmless as the bill was in its terms, it could not have passed, but for the amendment moved by the gentleman from Pennsylvania, (Mr. Ramsay,) by which amendment it was provided that "nothing in this act contained shall be construed as authorizing or directing the violation of any treaties existing between the United States and any Indian tribe." I was perfectly well persuaded, at the time, that this proviso would be without practical effect; but it saved the bill from being lost; and now, from one end of the continent to the other, this proviso is held up to show that the Indian Bill of last Winter does not sanction the compulsory removal of the Indians; that the treaties are to be held inviolate; and that the Indians are to be protected in their rights; all the while that it is perfectly notorious, as I shall demonstrate before I sit down, that the Indians are not to be protected; that the treaties are violated; and that this *proviso* is a dead letter.

The bill passed, we all remember how, under the severest coercion by the previous question, that I have ever known, applied, too, for the purpose of shutting out the amendment of the gentleman from Pennsylvania, (Mr. Hemphill,) the object of which was to obtain information, in respect to the character of the country, to which the Indians were to be removed. For I beg it may be recollected, after all we have heard of the factious course pursued by the minority, that all we asked was the adoption of the amendment of the gentleman from Pennsylvania, which proposed to send a respectable commission into this region, to see if it be fit for the habitation of the fellow-beings whom we are driving from their homes; and that this was denied us.

Still the act seemed to promise something to the Indians, for it bore on its face, that the treaties were not to be violated. The money which it granted was granted conditionally: the condition was contained in a proviso; and, if that proviso were not acted up to, no appropriation was made, and no expenditure was lawful.

Just two, or perhaps three, days after the passage of the act, the Georgia laws took effect and went into operation over all the Indians included within the nominal boundaries of the State.

And here I reach a part of the subject, on which I dwell with great pain, the legislation of Georgia over the Cherokees. It is my duty to inquire into the character of the Georgia laws, against which our interference is invoked, and our protection demanded. I speak of the laws of Georgia individually, and not of the other States who have extended their jurisdiction over the Indians, because the legislation of Georgia is better known. I do not single out her laws invidiously. Neither do I pretend an acquaintance with her whole code. I have not seen it. A few laws only, that form a part of it, have come to my knowledge; but these are sufficient to establish my proposition, that these Indians have great and just cause to look to us for protection.

I will first speak of the effect of the Georgia legislation upon the Cherokee government. The Cherokees, sir, have a very respectable representative government; respectable in its character; respectable in its origin. The first sketch of it proceeded from the same pen, that drafted our own Declaration of Independence. In 1809 Mr. Jefferson gave this People the first elements of a system of Government, adapted to their condition, which I will venture to read to the House.

"*My Children, Deputies of the Cherokee Upper Towns.*

I have maturely considered the speeches you have delivered me, and will now give you answers to the several matters they contain.

You inform me of your anxious desires to engage in the industrious pursuits of agriculture and civilized life; that finding it impracticable to induce the nation at large to join in

this, you wish a line of separation to be established between the Upper and Lower Towns, so as to include all the waters of the Highwassee in your part; and that having thus contracted your society within narrower limits, you propose, within these, to begin the establishment of fixed laws and of regular government. You say, that the Lower Towns are satisfied with the division you propose, and on these several matters you ask my advice and aid.

With respect to the line of division between yourselves and the Lower Towns, it must rest on the joint consent of both parties. The one you propose appears moderate, reasonable and well defined; we are willing to recognize those on each side of that line as distinct societies, and if our aid shall be necessary to mark it more plainly than nature has done, you shall have it. I think with you, that on this reduced scale, it will be more easy for you to introduce the regular administration of laws.

In proceeding to the establishment of laws, you wish to adopt them from ours, and such only for the present as suit your present condition; chiefly indeed, those for the punishment of crimes and the protection of property. But who is to determine which of our laws suit your condition, and shall be in force with you? All of you being equally free, no one has a right to say what shall be law for the others. Our way is to put these questions to the vote, and to consider that as law for which the majority votes—the fool has as great a right to express his opinion by vote as the wise, because he is equally free, and equally master of himself. But as it would be inconvenient for all your men to meet in one place, would it not be better for every town to do as we do—that is to say: Choose by the vote of the majority of the town and of the country people nearer to that than to any other town, one, two, three or more, according to the size of the town, of those whom each voter thinks the wisest and honestest men of their place, and let these meet together and agree which of our laws suit them. But these men know nothing of our laws. How then can they know which to adopt? Let them associate in their council our beloved man living with them, Colonel Meigs, and he will tell them what our law is on any point they desire. He will inform them also of our methods of doing business in our councils, so as to preserve order, and to obtain the vote of every member fairly. This council can make a law for giving to every head of a family a separate parcel of land, which, when he has built upon and improved, it shall belong to him and his descendants forever, and which the nation itself shall have no right to sell from under his feet. They will determine too, what punishment shall be inflicted for every crime. In our States generally, we punish murder only by death, and all other crimes by solitary confinement in a prison.

But when you shall have adopted laws, who are to execute them? Perhaps it may be best to permit every town and the settlers in its neighborhood attached to it, to select some of their best men, by a majority of its voters, to be judges in all differences, and to execute the law according to their own judgment. Your council of representatives will decide on this, or such other mode as may best suit you. I suggest these things, my children, for the consideration of the Upper Towns of your nation, to be decided on as they think best, and I sincerely wish you may succeed in your laudable endeavors to save the remains of your nation, by adopting industrious occupations and a government of regular laws. In this you may rely on the counsel and assistance of the Government of the United States. Deliver these words to your people in my name, and assure them of my friendship.

JANUARY 9, 1809. THOMAS JEFFERSON.

In 1817 this government received the sanction of the United States, in a treaty negotiated in that year by the present Chief Magistrate, as a Commissioner Plenipotentiary for that purpose. In the preamble to this treaty the incidents of 1809 are alluded to; the purpose of the Cherokees who remained on this side of the Mississippi, to begin the establishment of fixed laws and a regular Government is recognized, together with the promise made by Mr. Jefferson of the patronage, aid, and good neighborhood of the United States, alike to those who emigrated and those who staid behind. This treaty was unanimously ratified by the Senate of the United States. Thus originated and thus confirmed, the Cherokee Government subsequently assumed a highly regular form, and an improved organization. Its practical operation was excellent, and it did the United States no harm, because it was assumed as the principle of our Government, that no change was to be wrought by the improved institutions of the Cherokees on their relations with us.

Of the orderly and becoming manner in which the Cherokee Government was conducted, we have the satisfactory testimony of Messrs. Campbell and Meriwether, who went among them to negotiate a treaty in 1823. I read an extract from a letter addressed by them to the Council of the Cherokee Nation, dated Newtown, 16th October, 1823:

"Friends and Brothers: We are happy that a short time has been consumed in the correspondence between you and the State commissioners.

"This has afforded us an opportunity of becoming partially acquainted with several members of this Council. For the whole body we entertain a high respect, and we trust, that, with some of you we have contracted individual friendships. In saying this, we do no violence to our feelings, neither do we lower the elevated character of the United States. People who have never seen you, know but little of your progress in the arts of civilized life, and of the regular and becoming manner in which your affairs are conducted.

"Your improvement reflects the greatest credit upon yourselves, and upon the Government by which you have been improved and fostered."

Such was and is the Cherokee Government which Georgia has avowed her purpose, by one sweeping act of legislation, to put down. That State has enacted a law making it highly penal to exercise any of the functions of this Government. Chiefs, headmen, members of the Council, Judicial and Executive officers, are all subject to four years' imprisonment in the penitentiary if they presume to exercise any of the functions of Government within their own tribe, and under that Constitution which we originally and repeatedly exhorted them to frame.

In this way the greatest confusion is at once introduced into the concerns of this unhappy people. Their own Government is outlawed, and it is made highly penal to execute its functions. The protection of the United States is withdrawn, because Georgia has extended her laws over the Indians; and Georgia herself, although asserting, and in many respects exercising her jurisdiction, has not yet organized it in such a manner as to keep the peace among this afflicted race. Their system of Government, instead of being regarded as almost all Governments, however defective, are entitled to be, as an institution necessary for the well being of the people, which ought to be treated with tenderness, and not be destroyed till a substitute is provided, has been abated and broken down as a nuisance.

But among the laws of Georgia extended over the Cherokees, there are some which, from their nature, must take an immediate effect; and among these I cannot but notice several whose operation must be as injurious to the welfare of the Indians as the entire system is destructive of their rights. At the late session of the Georgia Legislature a law was passed "that no Cherokee Indian should be bound by any contract, hereafter to be entered into, with a white person or persons; nor shall any Indian be liable to be fined in any of the Courts of law or equity in this State on such a contract." I am aware that laws of this kind have been found necessary among the dwindling remnants of tribes in some of the States, whose members are so degenerate that they are unable to preserve, against the arts of corrupt white men, the little property they possess. But among the Cherokees are men of intelligence and shrewdness, who have acquired and possess large accumulations of property, houses, shops, plantations, stock, mills, ferries, and other valuable possessions; men who understand property and its uses as well as we do, and who need all the laws which property requires for its judicious management. Notwithstanding this, Georgia, at one blow, makes all these people incapable of contracting. Men as competent as ourselves to all business transactions, are reduced by a sweeping law to a state of pupilage.

[Mr. Foster, of Georgia explained, that this law was passed for the benefit of the Indians, to prevent their being imposed on. That it did not release white men from their engagements to Indians, but Indians from their engagements to white men.]

I understood and stated the law precisely as the gentleman from Georgia states it. I know this character may be claimed for the law. But how does it seek the benefit of the Indians? By reducing them to a state of minority. Sir, it is for the benefit and protection of children, that they are unable to contract; but still they are children, and the law holds them to their infancy. And what sort of a boon is it to men of large property and active dealings to pass a law releasing them from their contracts? Does it not directly follow, that, if they cannot be held to their contracts, no one will contract with them; and that the apparent limitation of the law which exempts the Indian while it binds the white man, is illusory; for who will contract with a person who is by law exonerated from compliance with his engagements? Such a law can have no other effect among Indians than among white men; and what would be the effect on the business of a community of white men, to enact a law releasing them from all engagements into which they might enter?

By the law of Georgia of 1829, the testimony of an Indian was declared inadmissible in any case, in which a white man is a party. This law was generally condemned during the discussions of last year. The objections taken to it were declared by some of the advocates of the course pursued by Georgia to be unreasonable, captious, and groundless, and were set down to the score of morbid sensibility and political philanthropy. Now, what has been the practical operation of this feature in the Georgia law? Governor Gilmer thus describes it in his Message at the opening of the late session of the Georgia Legislature:

"It is also due to our Indian People, that that provision in the law of 1829, should be repealed, which prevents Indians and the descendants of Indians from being competent witnesses in the Courts of the State, in cases where a white man is a party. The present law exposes them to great oppression, while its repeal would most probably injure no one. Attempts have been made to strip them of their property by forged contracts, because of the impossibility of defending their rights, by the testimony of those who alone can know them. And although the moral feeling of our frontier community has been too correct to permit such infamous proceedings to effect their ends; yet the character of our legislation for justice requires, that the rights of those People should not be exposed to such danger."

Such is the character, which Governor Gilmer gives of this law, and of its operation. I have heard some details of the oppressions to which he alludes. I have no reason to doubt their truth; but I will not repeat them to the House, without vouchers to support them. I

will only add, that this law rejecting the testimony of Indians, remains unrepealed; and that their rights and property are still dependent on "the moral feeling of the frontier community" of Georgia. That frontier community must have better feelings and principles, than usually actuate a part of every community, if, in the continued operation of this law, the Indians are not subjected to the most grievous oppressions.

I will mention another law of the new code. Its design may be imperfectly apprehended by me: and if I err in the motive for which I suppose it was enacted, I hope I shall be excused, on the ground of the great difficulty of picking up here and there—one law, in this newspaper, and another in that—the information, which, as it seems to me, ought to have been spread before us, in ample detail, to enlighten and guide our legislation. The law, to which I allude, subjects all white persons, who shall reside within the Cherokee country, without a permit from the Governor of Georgia, or such agent as the Governor shall authorize, and who shall not have taken an oath of allegiance as a citizen of Georgia, to four years imprisonment at hard labor in the penitentiary. Now, I should be glad to be informed, where, on her own principles, Georgia gets the right to exact such an oath from all persons resident on her soil, granting the Cherokee country to be her soil. The Constitution of the United States gives Georgia no such right. It is there provided, that "the citizens of each State shall be entitled to all the privileges and immunities of citizens of the several States." Grant that the country is subject to her laws: what right has she to tender to the citizens of another State, an oath of allegiance as citizens of Georgia? If I go to Savannah or Milledgeville, and demean myself peaceably, I wish to know, what right, under the Constitution, Georgia possesses to shut me up to hard labor in her penitentiary, if I will not take an oath, as a citizen of that State.* I am told that this law is intended to strike at the missionaries. I do not assert the fact, nor ascribe motives to men or bodies of men. If this is its design, as it will unquestionably be its effect, I trust it will be borne in mind, that the missionaries were introduced into the Cherokee nation under very respectable auspices. It was during the administration of Mr. Madison, and with the express consent and approbation of Mr. Crawford, while this gentleman held the office of Secretary of War. His letter to Mr. Kingsbury, to this effect, is among the documents, formerly communicated to the House. The missionaries were then promised the protection, countenance, and co-operation of the Government; and the annual appropriation for civilizing the Indians was recommended to be made, and has been applied in furtherance of their operations. They are, to say the very least, an innocent and a harmless class of men. They expressly disclaim having interfered in the political relations of the Cherokees with the United States. They have unquestionably been the instruments of great good. If this region, and its ill-fated inhabitants, were swallowed up tomorrow by an earthquake, and sunk from existence, the missionaries would have left monuments of their benevolent labors, which will last as long as the history or the memory of this generation lasts; yes, sir, as long as the Earth and the Heavens shall last.† The law I have quoted is supposed to aim at their exclusion.

Thus far it is possible, that Georgia (and I again beg leave to say, that I name that State not invidiously) may be thought by some persons not to have gone beyond some abstract right of civil jurisdiction, capable of being reconciled with a "possessory right," in which the Indians were promised by the Executive to be protected. But Georgia has not stopped here. In the course of the year 1829, it was found, that this region possessed, and probably in abundance, veins of gold. As soon as this discovery was made, intruders from every quarter, and from all the States in the neighborhood flocked into the gold region and overran the land. The Indians demanded their removal by the Agent. The Agent referred the case to the Secretary of War, and the Secretary of War gave the requisite orders for their removal. This took place before the first day of June, 1830. That day the laws of Georgia took effect. And very shortly afterwards I read a Proclamation in the papers, proceeding from a gentleman whom I most highly respect, the present Governor of Georgia, and which appeared to be of a character so strange and unexpected, that I could scarcely credit my senses as I read it. Let me read a portion of this Proclamation to the House, which bears date 3d June, 1830.

"Whereas it has been discovered, that the lands in the territory, now occupied by the Cherokee Indians, within the limits of this State, abound with valuable minerals, and especially gold; and whereas the State of Georgia has the fee simple title to said lands, and the entire and exclusive property of the gold and silver therein; and whereas numerous persons, citizens of this and other States, *together with the Indian occupants of said Territory*, taking advantage of the Law of this State, by which its jurisdiction over said territory was not assumed until the first day of June last past, have been engaged in digging for gold in said land, and taking therefrom great amounts in value, thereby appropriating riches to themselves, which, of right, equally belonged to every other citizen of the State, and in viola-

* These are the terms of the oath, "I, A. B. do solemnly swear, or affirm as the case may be, that I will support and defend the Constitution of Georgia, and uprightly demean myself as a citizen thereof."

† Much information relative to the character and operations of the Missionaries among the Indian tribes, may be found in the memorial to Congress of the Prudential Committee of the Board of Commissioners of Foreign Missions, presented to the House of Representatives by Mr. E. on the 14th February.

tion of the rights of the State, and to the injury of its public resources," &c. And then the Governor warns "all persons, whether citizens of this or other States, *or Indian occupants*, to cease all *further trespass* on the lands of this State, and especially from taking any gold or silver from the lands included within the Territory occupied by the Cherokee Indians," &c. All further trespass on their own lands, and all further digging for their own gold!

It is true the Governor, in his Message at the opening of the late Session of the Legislature in Georgia, attempts to justify this strange pretension. "The right thus asserted," says he, "was supposed to be established, by the customary law of all the European nations, who made discoveries or formed Colonies on the Continent; by the fee simple or allodial title, which belongs to the State, to all lands within its limits, not already granted away; and the absence of all right in the Indians, they never having appropriated the mineral riches of the earth to their own use." Neither had Georgia appropriated these mines by occupation. As soon as the Cherokees knew their existence, they proceeded to take possession of, and to work them, till they were driven away, by the laws of Georgia, and the troops of the United States. What force there can be in the English Common law of fee simple and allodial title, to control the stipulations of a treaty between the United States and a tribe of Indians, I confess my inability to imagine. The argument from the customary law of the European *conquistadores* proves a great deal too much. It would justify the Governor, not only in seizing the gold mines, but in reducing the Indians themselves to bondage, and to labor in the mines. The Portuguese did this and so did the Spaniards. The slave trade was projected by the benevolent Las Casas, to relieve the Indians from digging their own gold for their conquerors.

When this subject was under the consideration of the House at the last session, I certainly did not entertain very favorable auguries of the treatment, which the Cherokees were likely to receive; but it never entered into my head, that they were to be denied a right to their own mines. On the contrary, I assumed it as a matter of course, that they were the lawful and admitted owners of this mineral wealth. Having, in the course of my remarks on this subject, had occasion to allude to the intruders into the gold region, before I could finish the sentence, in which I made that allusion, a gentleman who voted for the Indian bill interrupted me, with the prompt assurance, that these intruders were ordered to be removed by the Executive. I was gratified at the information, although it was then no more (as I thought) than a matter of course. My next information on the subject was derived from Governor Gilmer's proclamation, claiming for Georgia the absolute property of the gold mines, and warning the Indians to desist from digging them.

Extraordinary as this is, I fear something more extraordinary remains to be told. By the intercourse law, the Executive is authorized to employ the military force of the United States to remove intruders from lands belonging or secured to Indians by treaty. This power has several times been exercised. But the Indians also possess by treaty, the right of proceeding summarily to redress themselves. They possess the right by the treaty of Holston negotiated in 1791. The Secretary of War in alluding to the right which the Indians thus possess, under the treaty of Holston, speaks of it disparagingly as a treaty forty years old. But it will be recollected, that with all the other treaties it was confirmed by an express article in that of 1817. What are the terms in which this right is secured to the Indians by the treaty of Holston?

"If any citizen of the United States, or other person, not being an Indian, shall settle on any of the Cherokee Lands, such person shall forfeit the protection of the United States, and the Cherokees may punish him or not as they please."—*Treaty of Holstein, Art. 8th.*

In pursuance of this right, guarantied by treaty, but flowing from that law of Nature, which is before all treaty, the Indians have exercised this power of protecting themselves from intruders: nor was it, that I know of, ever questioned by any Administration till this.

It has received the sanction of the present Chief Magistrate in the amplest terms.

In a letter to Path Killer and other Cherokee Chiefs, dated Head Quarters, Nashville, 18th Jan. 1821, Gen. Jackson thus expressed himself:

"Friends and brothers: I have never told a red brother a lie nor deceived him. The intruders, if they attempt to return, will be sent off. But *your light-horse* should not let them settle down on your land. You ought to drive the stock away from your lands, and deliver the intruders to the Agent; but if *you cannot* keep intruders from your land, report it to the agent, and on his notice, I will drive them from your land.

I am your friend and brother,

ANDREW JACKSON."

In pursuance of the authority conferred on the tribe, by the treaty of Holston, an authority to the exercise of which they had been exhorted a few years ago, by Gen. Jackson, and of which the validity was, I believe, never questioned before, the Cherokees, in the course of the last year, in consequence of the number and disorderly conduct of the intruders upon their lands, proceeded to remove a portion of them. This step, which they were perfectly warranted to take, occasioned a hostile incursion from Georgia, in the result of which one Indian was killed, and some others wounded and carried prisoners into Georgia. This oc-

currence occasioned the detachment of a party of United States' troops into the Cherokee country, who accordingly came, rather, as it would seem, to protect the intruders from the Cherokees, than the Cherokees from the intruders. Being there, orders were given to the troops to remove intruders from the gold region, and these orders were at first complied with, but with partial success; for as soon as a band of gold diggers were driven from one spot, they settled in another, like hungry vultures frightened from their prey. They are said to have been a *colluvies* of all classes and characters; a lawless and desperate gang.

And here ensued a scene of a character bordering on comedy, if any thing can be considered burlesque in so grave a matter. I give it as it is related in the memorial of the Cherokee Indians, on our tables:—

"In another case, in the name and authority of George R. Gilmer, Governor of Georgia, a bill was filed in chancery, in the Superior Court of Hall county, in July last, against certain sundry Cherokees, praying for an injunction to stop them from digging and searching for gold within the limits of their own nation; and the bill being sworn to before the same A. S. Clayton, he awarded an injunction against the parties named in the bill as defendants, commanding them, forthwith, to desist from working on those mines, under the penalty of 20,000 dollars, at a time and place where there were unmolested several thousand intruders from Georgia and other States, engaged in robbing the Nation of gold, for which the owners were ordered not to work by the said writ. Under the authority of this injunction, the sheriff of Hall county, with an *armed force*, invaded the Nation, consisting of a Colonel, a Captain, and thirty or forty militia of the State of Georgia, who arrested a number of Cherokees engaged in digging for gold, who were at first rescued by the troops of the United States stationed near the place, and the sheriff and his party themselves made prisoners, and conducted fifteen miles to the military camp, when a council of examination was held, and the exhibition of their respective authorities was made, which resulted in the release of the sheriff and his party, and a written order by the commanding officer of the United States' troops, directing the Cherokees to submit to the authority of Georgia, and that no further protection could be extended to the Cherokees at the gold mines, as he could no longer interfere with the laws of Georgia, but would afford aid in carrying them into execution. On the return of the sheriff and his party, they passed by the Cherokees who were still engaged in digging for gold, and ordered them to desist, under the penalty of being committed to jail, and proceeded to destroy their tools and machinery for gleaning gold, and, after committing some further aggression, they returned. Shortly afterwards, the sheriff, with a guard of four men, and a process from the State of Georgia, arrested three Cherokees for disobeying the injunction, while peaceably engaged in their labors, and conducted them to Wadkinsville, a distance of seventy-five miles, before the same A. S. Clayton, who then and there sentenced them to pay a fine of ninety-three dollars, cost, and stand committed to prison until paid, and also compelled them to give their bond in the sum of one thousand dollars, for their personal appearance before his next Court, to answer the charges of violating the writ of injunction aforesaid. In custody they were retained five days, paid the cost, gave the required bond, and did appear accordingly, as bound by Judge Clayton, who dismissed them on the ground that the Governor of Georgia could not become a prosecutor in the case. For the unwarrantable outrage committed on their liberty and persons, no apology was made, and the cost they had paid was not refunded."

I confess when I first read the account of this incident in the papers last Summer, I supposed it was the wild freak of some inconsiderate subaltern. I did not imagine that it could have taken place by order from the Executive of the United States. The affair is but partially explained in any document I have seen; but thus much is certain, that orders were sent by the Secretary of War to the Cherokee Agent and to the officer commanding the troops of the United States, to forbid the Cherokees as well as the intruders from digging the gold mines. On the 26th June, 1830, an order was issued from the War Department at Washington to the officer commanding the United States troops in the Cherokee country, "Directing him, until further orders, to prevent *all persons* from working the mines, or searching for or carrying away gold or silver, or either metal from the Cherokee Nation."

This order was communicated by the Agent to Mr Ross, the principal Chief of the Cherokees, in a letter, dated 10th July, 1830, in which he says:

"I have also enclosed you a copy of a letter from the War Department, on the subject of the Gold Mines, by which you will see that *all persons* are ordered to be kept from digging for gold until further order; and have to request that you will, in such way as you think best, make it known to the Indians, and also that you will advise them to desist for the present, as I am very desirous that no difficulties should take place between the United States' troops and them on the subject."

And now, Sir, I think I may safely appeal to many gentlemen of the House who voted for the Indian bill last winter, whether it entered into their imaginations that under that bill, and with its proviso, the Indians should be prohibited by the armed force of the United States from digging gold within the limits secured to them by numerous treaties. There were gentlemen, I know, who voted for the bill, condemning the policy of which it is a part, but deeming it necessary to save the Indians. Others thought something ought to be done in

consequence of the compact of 1802. Others were influenced by some refined notion of a jurisdiction co-extensive with the charter. Did any of them mean or intend, that within less than a twelve month—within less than three months—after adopting a proviso that the treaties should not be violated, the Cherokees should be driven, by the bayonet of our United States' troops, from gold mines within the boundaries secured to them by treaty and law?

The winding up of this affair was in keeping with its commencement and progress. The object of marching the troops into the Cherokee country, according to Major General Macomb, "was to guard against the difficulties which it was apprehended would grow out of the conflicting operations of the Cherokees and *the lawless intruders*, upon the mineral district within the State of Georgia. Having fulfilled the instructions of the Government, the troops were directed to return for the winter to their respective quarters."

On the 29th of October last, Gov. Gilmer wrote to the Secretary of War, requesting the removal of the troops, on the ground that the State of Georgia could enforce her own laws. On the 10th of November, the Secretary answers him, that previously to the receipt of his letter, (two days before) the troops had been ordered out of the Cherokee nation, because the purposes for which they had been sent into it were, *in a great measure*, accomplished.

This object, according to the General Commanding in Chief, was to prevent collision between the Cherokees and lawless intruders into the gold district. It was answered, by removing both!

And here it is obvious to ask, how, on the ground assumed by Georgia and sanctioned by the Executive of the United States, the President could feel himself authorized to employ the armed force of the United States in removing gold diggers, lawless or lawful, Indians or white men, from the gold mines of Georgia, if Georgia's they must be? It is not his duty to enforce the laws of Georgia, nor to protect her property. She maintains that she is able to do it herself. Nay, the still broader question presents itself—what right, *on the ground assumed by Georgia and the Executive*, have we to go upon the soil of Georgia to remove or bribe away a part of her subjects or citizens? What right to keep an agent there, or to pay them an annuity? Am I answered, it is done in pursuance of treaties? The treaties are declared unconstitutional and void. Sir, it happens now to accord with the interest of Georgia to permit it, but surely she will not bend her principles to her interest?

It has been urged against the Colonization Society, on very high authority, that it is unconstitutional for the United States to go into a State to remove a part of its colored population. In a very able report made to the Senate, I think at the first session of the twentieth Congress, I find the following argument:

"Before they leave this part of the subject, the Committee will observe, that the framers of the Constitution most wisely abstained from bestowing upon the Government thereby created any powers whatever over the colored population, as such, whether this population was bond or free.

"If the United States possess the right to intrude into any State, for the purpose of withdrawing from thence its free colored population, they undoubtedly must exert practically the power of previously deciding what persons are embraced within this description. They must have the power of determining finally not only who are colored, but who are free persons. This committee believe, however, that any attempt, by the United States, to exercise such a power would not only be a direct violation of the Constitution, but must be productive of the worst effects."

Now, sir, it is not necessary to consider how far this argument applies to the operations of the Colonization Society. But on the principle that the Indian country is a part of the soil, and its occupants a portion of the People of the State, I confess I do not see how gentlemen who stand on the ground of State rights and strict construction of the Constitution, can move an inch in this matter. What, sir, constitutional for the General Government to go into the counties of Georgia, into Hall and Habersham, to get the People of those counties together—People subject to the laws of Georgia—make a compact with them to move away in a body—take millions of money out of the Treasury of the United States, to effect this object—to enable the President to go upon the soil of Georgia and buy off her People! In what part of the Constitution, on the principles which gentlemen set up, is there a word to warrant such a policy, or to justify an appropriation of money to carry it into operation?

I know it has been answered, that it is constitutional to fulfil a compact. I must own that this mode of getting at a grant of power is, for statesmen who advocate a strict Constitution, liberal enough. According to this principle, the General Government may enter into a compact to do an unconstitutional thing, and it thereby becomes constitutional. On the ground upon which this new Indian policy rests, the compact of 1802 was itself unconstitutional, and was so argued to be, in the Senate last winter. If the soil and jurisdiction of this territory were already Georgia's, the United States had no right to interfere with it, not even to extinguish the Indian title on peaceable and reasonable terms. Unless the principles of the Constitution vary with the complexion of those who are the subjects of its provisions, the United States have just as little right to enter into compact to extinguish the title of the red men of one county of Georgia, as that of the white men of another county. The gentlemen are actually obliged to come to us for principles, on which they can remove the In-

dians. Unless the treaties are valid, the United States have no power to act in this matter. Gentlemen deny the validity of the treaties in order to get at the soil; and then come back to the treaty-making power, to get the Indians removed from it.

The conduct which Georgia has pursued, with respect to the *gold*, forcibly reminds me of the opposite course adopted by Mr. Jefferson, in reference to some *iron mines* discovered at the mouth of the Chickamauga, in Tennessee. Tennessee did not claim these mineral treasures; but the Indians themselves expressed a wish to cede these mines to the United States, for the purpose of having them wrought. Mr. Jefferson accordingly negotiated a treaty of cession for six miles square, including these mines; and gave the following reasons to the Senate, as his inducement: "As such an establishment would occasion a considerable and certain demand for corn and other provisions and necessaries, it seemed probable that it would immediately draw around it a close settlement of the Cherokees; would encourage them to enter on a regular life of agriculture; familiarize them with the practice and value of the arts; attach them to property; lead them of necessity, and without delay, to the establishment of *laws and Government*, and thus make a great and important advance toward assimilating their condition with ours."

But the seizure of the gold mines, violent as that measure is, beyond any thing that was or could have been apprehended, loses its importance, when contrasted with another act of great, of unexampled, and I must add stupendous injustice. I refer to the law which has passed the Legislature of Georgia, for the survey and disposal of the lands of the Cherokees. Let it be remembered, then,

1. That there is a boundary, between the Cherokees and the States surrounding them, fixed by numerous treaties and by law.

2. Let it be remembered, that the treaty of Holston, which was negotiated in 1791, on instructions previously ratified by a unanimous Senate, contains this simple and expressive pledge: "The United States solemnly guaranty to the Cherokee nation all their land not hereby ceded."

3. That as late as 1817, this as one of the previous treaties, was declared to be "in full force," with all its "immunities and privileges;" and that this confirmation is contained in a treaty, negotiated by the present chief magistrate, and unanimously ratified by the Senate.

4. And that the Intercourse Act makes it highly penal, to survey the lands belonging or secured to any Indian tribe by treaty.

And now, sir, I hold in my hand a law of Georgia, *authorizing the survey of the lands thus solemnly guarantied; their division into districts and sections; and their distribution by a land lottery!*

There is a provision in this act of Georgia, by which, if the President of the United States should execute his sworn duty, in enforcing the laws of the United States, he would subject himself to imprisonment for five years in the Georgia Penitentiary; that being the punishment denounced by this State law on any person, who shall obstruct the surveys, which it is most assuredly the duty of the President to do.

The law provides for the survey of the country into sections and districts. The sectional surveyors, twelve in number, are to proceed with as little delay as possible, to the duties assigned them. The survey of the districts is to be suspended until the next meeting of the General Assembly, and until further enactments for that purpose. The number of district surveyors is one hundred and ninety-six, and the Governor is authorized to call out a military force to protect them in the discharge of their duties.

The only mitigation of the severity, with which this bill acts on the Indians, is the provision contained in the thirty-first section. By this section it is directed, that "the Indians and their descendants, who have made improvements upon the territory, are to be protected in the possession of those improvements and of the lots of land upon which the said improvements are made, *until otherwise directed by the General Assembly*, or until they are voluntarily abandoned by the Indian occupants. Indians not allowed to sell their right of occupancy to any person, unless it be to the Government of the United States, or the government of Georgia, for the use of the persons drawing such improved lots in the lottery; and no grant to be issued, until the Indians shall have abandoned the lots in their occupancy; the fortunate drawers of such improved lots, to forfeit their draws, should they by threats, or menaces, or violence, remove or attempt to remove any Indian, from such improved lot."

How much this mitigation is worth may be judged of, by considering, that it exists only during the pleasure of the General Assembly, and that the evidence of the Indian occupants, and of all those able to support his title, is inadmissible in the Georgia Courts. In this state of things, it little matters, whether he be expelled at once, or his estate be thrown into a land lottery, to be drawn as a prize, and a "fortunate drawer" planted at his door, or dogging him, wherever he goes, till he voluntarily abandons his home.

Especially when we recollect, that, objectionable as this law is, a still more objectionable and oppressive measure was proposed and strenuously advocated, and if I am not misinformed, adopted, in the House of Representatives of Georgia. I derive my information from a letter, written from Milledgeville, and published in the Augusta Chronicle. I know nothing of its author, but that, as appears on the face of the letter, he is a friend of the present administration.

Extract of a letter to the Editor of the Augusta Chroniele from a correspondent in Milledgeville, dated 27th Nov. 1830.

"The particular question now and for several days past before the House, is the adoption of Mr. Hayne's substitute to the bill reported by Judge Schley, from the Committee on the state of the Republic. This contemplates, as you are aware, the taking immediate possession of the Indian lands, and forcibly driving the Indians therefrom. How such a bill can be the subject of a moment's consideration in a christian land, is to me the subject of the deepest astonishment, and yet many intelligent men believe and fear it may be successful. For my own part, I will not believe it possible, and indeed should scarcely credit the evidence of my own senses, if such were the fact. God forbid such a fatal consequence ! and I will confidently rely on his over-ruling goodness and protection to avert it, to save the Indians,—nay tenfold more, to save *our own State* from the serious evils which must inevitably follow it. I must not trust my feelings farther on this point ; they are perhaps too deeply and unnecessarily wounded. We will at least hope so. One thing is certain, that no effort is or will be spared to prevent the adoption of the measure ; and I am proud to see among its opponents many, very many of the first and ablest men of the Assembly of both parties. Indeed it is by no means a party matter, &c.

"Numerous as are the advocates of this measure, the array of talent against it is very powerful, and the arguments of its opponents are so und and incontrovertible. To say nothing of humanity, the want of necessity or expediency ; the ingratitude of opposing the President and his Administration which have long been and still are making every possible effort in our behalf; the folly of now necessarily arraying them against us, contrary to their will, and of indirectly giving their and our enemy, Mr. Clay, still further and greater power against them ; the imminent danger of a direct and violent controversy with the General Government, all of which are directly opposed to this measure, the faith and honor of the State stand openly and irrevocably pledged against it. But for this pledge given by our Representatives, Mr Wilde and others, on the floor of Congress, last session, against the exercise of any force against the Indians, any effort to drive them forcibly from their lands, the bill to encourage their emigration to the West of the Mississippi would not and could not have been passed."

This bill with some amendments passed the House of Representatives of Georgia, 76 to 55.

I read this to show that it is not merely "the white savages of the North," nor the opponents of this Administration, who condemn the course pursued by Georgia.

But I do not find that the law passed is essentially better. The evil is only delayed. The lands improved by the Indians are not exempted from the lottery. An amendment to that effect was rejected, by a vote of nearly two to one ; and after the lottery is drawn the unhappy occupant is only to keep possession, till "the fortunate drawer" can persuade him to go.

And now, sir, is there a member of this House, who can recollect, that the United States have solemnly guarantied this land to the Indians ? That we guarantied it for a valuable consideration, *which we keep ;* that we guarantied it voluntarily, unanimously, and before the compact of 1802, and not feel that the guaranty ought to be redeemed ; that the pledged faith of the country ought not to be violated ?

I again appeal to gentlemen, who, without approving of the principles of this policy, gave their votes for the bill of last session, qualified as it was by the *Proviso,* whether they would have lent their sanction to the measure, had they believed, that, within a twelvemonth, a law would be passed by Georgia, to send an army of surveyors into the territory of the Cherokees, and to subject any person who should presume to execute your laws, to the punishment of the Penitentiary, from the President of the United States down to the lowest officer in the service ?

Why, sir, granting that all these treaties made by the United States are unconstitutional and not binding ; granting the truly atrocious proposition, that we can break the treaty and keep the consideration ; granting that Georgia still possesses the power, which if she ever had it, by adopting the constitution she gave up to the United States, and that things now stand as they stood under the old confederation, all this would not mend her title to these lands. Under the confederation, she admitted the right of the Cherokees to treat as an independent nation. She treated with them herself ; the treaty of Augusta in 1783 stands in her statute book ; and in that treaty, in words evidently of her own choosing ; words of the English Common law ; she accepts a cession of land from the Cherokees ; and in so doing recognizes their right to cede, and to keep what they do not cede. I will read to the House the first and sixth articles of that treaty.

"Whereas a good understanding and union between the inhabitants of the said State and the Indians aforesaid are reciprocally necessary and convenient, as well on account of a friendly intercourse and trade, as for the purposes of peace and humanity ; it is, therefore, agreed and covenanted—

"1st. That all differences between the said parties, heretofore subsisting, shall cease and be forgotten.

6th. And lastly, they, the said headmen, warriors, and chiefs, whose hands and seals are hereunto affixed, do hereby, for themselves and for the nation they are empowered to and do effectually represent, recognize, declare, and acknowledge, that all the lands, woods, waters, game, lying and being in the State, eastward of the line hereinbefore particularly mentioned and described, is, are, and do belong, and of right appertain, to the people and government of the State of Georgia; and they, the Indians aforesaid, as well for themselves as the said nation, do give up, release, alien, relinquish, and for ever quit claim to the same, or any part thereof."

Now, what would have been thought of the transaction, if, the day after signing this treaty and accepting this cession, Georgia had laid claim to all the rest of the land; had passed a law disposing of it; had gone into the country, (supposing her to have been, what, at that period, she most assuredly was not, strong enough for that purpose) with an army of surveyors, and divided it out for distribution by a land lottery? It would have been thought an unparalleled breach of good faith.

But I will go farther than this: Suppose there had been no treaty at all—not even a state of peace—suppose that the armies of Georgia had done, what, at that time, it was wholly impossible for them to do—suppose they had overrun and conquered the land, even then the laws of nations and civilized warfare would not have justified this measure. Why, Sir, as a war measure, and in the hot blood of victory, such a thing has never, in modern times, been heard of, as the forcible seizure of the entire domain of a conquered people, and a partition of it into sections, the unoccupied part of which are to be immediately taken possession of, and the improved parts thrown into a lottery with the rest. It comes up to the precedent of the Norman Conquest, and goes beyond the partition of Poland. I doubt if a single Polish proprietor has been disturbed in the possession of his estate, from the date of the first partition to the present day. Suppose that Russia, and Austria, and Prussia, in addition to extending their laws over the Poles, had enacted a code, under which it was admitted, that they could not live, had cut up their lands into districts and sections, thrown their estates into a land lottery, granting to the proprietors no other privilege but that of occupancy, till they could be induced by legal duress and governmental persecution to emigrate to the deserts of Bucharia! What language would have furnished adequate terms for the condemnation of such a policy?

The very ground on which Georgia claims the right to pursue this course is the strongest reason, why she should not pursue it. Sir, she denies that they are an independent or even separate community. She says they are her citizens or subjects; calls them "her people;" constitutes them an integral part of her community; and then passes a law to distribute their lands by a lottery. Does not this show the injustice of the measure? Let her pass a law to dispose by lottery of the property of the people of Chatham and Effingham, of Richmond and Columbia; let her plant a "fortunate drawer" at the door of each man's shop and house, and the gate of his plantation, to worry him off to the foot of the Rocky Mountains.—No, sir, the very process of reasoning, by which Georgia would withdraw the Cherokees from our protection, can serve only to bring them under her own; and is itself the most incontrovertible of all arguments against this oppressive policy.

But we live under a Federal Union, designed to bring all the States, to a certain degree, under one government, and possessing tribunals of eminent jurisdiction, for the adjustment of controversies which are placed by the constitution within the province of such tribunals.

What is the aspect of this affair, in reference to this Federal Union, and the authority of its tribunals?

Let it then first be borne in mind, that Georgia in 1789 voluntarily became a party to the Constitution, "which is the supreme law of the land, and the judges in every State shall be bound thereby, any thing in the Constitution or laws of any State, to the contrary notwithstanding;" and that it is also a provision of that Constitution, to which Georgia is a voluntary party, that "the judicial power of the United States shall extend to all cases, in law and equity, arising under the Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority."

Under her new laws, Georgia has proceeded to take the life of an Indian, for a murder, alleged to have been committed on another Indian, within the Cherokee boundary. It belongs, in no degree, to my argument, to inquire into the guilt of this person. I have seen but an imperfect newspaper report of his trial, in a paper friendly to the policy of Georgia, which I mention only as authorizing the presumption, that the report is probably not strained against Georgia. From that report it appears, that Corn Tassel, (such is the name of this Indian; it is also the first Indian name subscribed to the great Hopewell treaty) was found guilty of murder, chiefly on evidence, which would not be admissible against the life of a white man, (I mean Indian evidence,) and on the testimony of a white man, whose evidence is contradicted by the Judge in his charge. Now, whatever may be said against the admissibility of Indian testimony in cases of property, I am clear that in a case of life and death, as good evidence ought to be required to convict an Indian as a white man. The jury that puts an Indian to death, needs, I think, as clear a warrant of credible evidence against him, as the jury that puts a

white man to death. The other testimony, to which I have alluded, is that of the officer who arrested Tassel, who testified that at first he talked only in the Indian language, but afterwards spoke English intelligibly. The Judge, who sat in the trial, mentions it as a circumstance to be regretted, that the prisoner at the bar "could not understand him."

But though I am inclined to think there was not evidence to establish the malice, I waive that point entirely, and do not pretend that Tassel is an object of sympathy. I go upon the assumption, that he was guilty, though I do not think that proved on the trial as reported. This "unfortunate" being, (as he is justly called by Judge Clayton,) on his trial before a court and jury, whose language he did not understand, pleaded by his counsel to the jurisdiction of the court. The ground of this plea appears to have been, that, under the treaties between the United States and the Cherokees, the latter were independent of the laws of Georgia. This plea was reserved for the consideration of all the Judges. They overruled it, mainly on the ground, that these treaties were unconstitutional, and could not bind Georgia.

Here the momentous bearings of the question begin to appear. Georgia decides, that numerous Indian treaties, negotiated during nearly fifty years, sanctioned by every branch of the Federal Government, under every administration, and by Georgia herself, at whose request and for whose benefit many of them were entered into, are all unconstitutional and void. Whence the Courts of Georgia derived the power to decide on the constitutionality of treaties and laws of the United States, I do not know. *Her* Constitution does not give it to her; and if it did, it would be a void grant, for Georgia is a voluntary party to the Federal Constitution made prior to her own.

The right of deciding in cases arising under the Constitution, laws, and treaties, is one of the rights expressly granted by the People of Georgia to the Federal Judiciary. The allegation, that the Indian Treaties are unconstitutional, is no more than might be made of any other treaties, that of Louisiana for instance, (which was at first supposed by Mr Jefferson and Mr Madison to require an amendment of the Constitution, to carry it into effect,) and if the Judges of a State can entertain the question of the constitutionality of the Cherokee treaties, I see no reason why they cannot do it in the case of any others.

It will easily be supposed, that the unfortunate being whose life was at stake, would be disposed by his counsel to maintain the validity of these treaties; and he accordingly applies for that writ of error, which, under the Judiciary act, issues, as a matter of course, when duly demanded. This was a case arising under the law and the treaties, the validity of which was denied by Georgia, and affirmed on behalf of the Indian.

The citation issues in the usual form, the form in which it has been respected by the Courts of the most powerful and enlightened States of the Union, who understand and love their rights as well as Georgia. This writ the Legislature of Georgia instructs the Governor and all other officers "to disregard, and with it every mandate and process that has been or shall be served upon him or them, purporting to proceed from the Chief Justice or any Associate Justice of the Supreme Court of the United States, for the purpose of arresting the criminal laws of this State."

In other words, Georgia repeals for herself a considerable portion of the twenty-fifth section of the Judiciary Act of Congress, and annuls, in all criminal cases, the second section of the third article of the Constitution of the United States.

Georgia, on the principles she has now asserted, has only to make it penal to do any act or thing under a law of the United States, and she thereby acquires exclusive jurisdiction over the subject, and annuls the law.

This is a much more compendious process than a convention of the people of a State, elsewhere proposed. And almost at the moment that this House resolves, by a majority nearly unexampled, that it will not repeal the twenty-fifth section of the Judiciary Act, Georgia repeals one half of that section, and of the clause of the Constitution on which it is founded.

Where is this to stop? Is it to stop any where? What laws of the United States have not been declared unconstitutional? What laws and treaties will not be acted on, as if they were unconstitutional, if a process so summary is permitted to obtain?

I will observe, in conclusion, that, till the validity of these treaties has been settled by the tribunal which is alone competent under the Constitution to entertain the question, and settled in favor of Georgia, Tassel could not be put to death by any lawful warrant. The very Judge who tried him is made, in the report, to say, that he "belongs to another nation." And, till it is settled by the competent authority, that this *other nation* is subject to the laws of Georgia, the death of Tassel remains illegal. At the same time I admit there may be difficulties in the case. The Constitution is clear, but it is not certain that the Judiciary Act gives full force and effect to all the provisions of the Constitution. But although there may be no remedy for the wrong done to the being whose life is taken, (if he has lost that life at a bar to which he was not amenable,) this want of remedy for the wrong proves nothing in favor of the right of Georgia. It is greatly to be lamented that she had not imitated the best part of the New York precedent, and granted a pardon or reprieve to Tassel. As a first case, a case of life and death, of an individual of a different nation and language, appealing to the faith of the Union, and asking only to be tried by that tribunal by which (if

the treaties are indeed valid) he had a right to be tried, it is greatly to be deplored that a little time could not have been granted.

I will only add that as there was a United States' force in the country when Tassel was arrested; and as Congress had just enacted in a law which the President signed, that the treaties should not be violated, I think those troops would have been as well employed, in protecting the life of a fellow-being, pending his appeal to the Courts of the United States, as in driving the Cherokees from their own mines.

And here I may suitably consider the plea, that Georgia has done no more in this matter than other States, and particularly New York. No argument is more apt to be fallacious, than the argument from analogy. There is great danger of mistaking slight and merely circumstantial points of resemblance, for entire parallelism. I will examine this case briefly but fairly. I will admit the points where it is a precedent in favor of Georgia; and I will point out those where it is not; premising, that if the legislation of Georgia violates law and treaty, it by no means follows that the Government of the United States may withhold the protection which it owes, and which is demanded by those who are the victims of that legislation, because New York has adopted similar acts of legislation.

It is matter of surprise, too, if the legislation of New York affords a sanction to that of Georgia, that it was not insisted on sooner. Three great negotiations have been held by citizens of Georgia, since the New York law of 1822, with the Creeks or Cherokees, and this precedent was never pleaded, as far as I can find in the record of the negotiations.

Now let us compare the cases. New York, in 1822, passed a short law extending her *criminal* jurisdiction over the dwindling remnants of tribes within her borders, and there she has stopped. She leaves her Indians as she found them. She makes no attempt, by severe penal enactments to break down the organization of their tribes. She has neither claimed nor surveyed their lands, nor seized their mines. As to the individual condemned by her Courts, Soo-non-gize, her Assembly pardoned him. Her law, I understand, has not since been acted upon; and it is the opinion of the highest legal authorities in the State, that it leaves the rights and condition of the Indians, where it found them. Here then are points of great and vital difference.

The New York law, in its terms confined to crimes and offences, was evidently intended, in its origin, to arm the State with power to protect the Indians, against the evil of imaginary and superstitious crimes; a power, as the event shows, designed to be called forth, only when such a peculiar occasion should require it. The Georgia Code is one of civil and criminal jurisdiction, the last of a series of measures, having for its great and avowed object, to effect the removal of the Indians. Hence, while New York stops at the claim of criminal jurisdiction, and does not, in point of fact, enforce that; Georgia enacts the severest laws against the entire social existence of the tribe, claims their lands, seizes their mines, and substantially drives them from her borders. If New York had gone into the Seneca Reservation with a score of surveyors, declaring the alternative of removal to the West, or extinction, and drawing a lottery for their lands, the case would have been more nearly parallel. Accordingly we find, in the last place, that the Senecas never invoked our protection, because no practical evil was done or threatened; the Cherokees invoke our protection, because the choice is set before them, of subjection to State laws, under which they are told they cannot live, and removal to a desert, where they believe they must die.

There is, therefore, the greatest difference in all the matters of fact, which give a character to the two cases. In point of equity and justice, the New York precedent could not of course alter the case; as one wrong affords no justification of another.

I will here also answer the argument drawn from the example of the colonies and of the States, before the Constitution. The argument from the practice of the colonies is of two-fold aspect, looking to the question, as one of humanity and of right.

First, as to humanity. Grant that the treatment of the Indians, by the colonies, was barbarous and cruel. We have lately been taunted with the fact, that when taken as prisoners of war they were sometimes sold as slaves to the West Indies; and our recollection has been refreshed with the circumstance, that, according to Cotton Mather, on occasion of forming an Indian fort, the huts within it took fire, and several of the wretched inmates here (as this author with detestable quaintness expresses it) "broiled" to death. These are the facts quoted against us. They were the incidents of a *war* of mutual extermination, between the Colonies and a powerful Savage foe. But I let that pass. What is gained by citing these facts? Suppose they prove the only thing they seem to prove, that the early settlers of New England were a blood-thirsty race, and treated the Indians barbarously? Is any thing gained for Georgia and her sister States, by proving that fact? Those, who would get an argument to support their policy, out of the fact, that, in the seventeenth century, some Indians were sold to the West Indies as slaves, need not go so far back. The slave trade, till very lately, was carried on throughout the civilized world. All nations were stained with its guilt. The States of New England brought the slaves from Africa; the Southern States bought them into bondage. And what then? Is the traffic less atrocious; or is it inconsistent for any one, North or South, at the present day, to denounce and reprobate it?

Let me not, however, be thought to admit the charge of barbarity against the early settlers of New England, towards the Indians. Some incidents occurred, in the perilous condition in which the colonists, in the early periods of their settlement were placed, which I surely will not vindicate; but their conduct towards the Indians in the main was honorable and kind. The charges against them, from whatever quarter, are substantially unjust. They had a right to come to this continent; they were guided hither by the hand of the same Providence, that had planted the Indians before them. There was room for both. Our forefathers had a right to a part of the soil, to be obtained by honest dealing with the natives. I have 'never pretended, that the Indian had an exclusive right to all the land he could see from the top of the mountain, or over which the deer may fly before him in the chase. But what follows from this admission? That after we have made an agreement with an Indian tribe, and got all we need, and guarantied the rest, we shall not be bound to the faith of our compact? I trust not.

How then is the question of right affected by the practice of the colonies? It is said they legislated over the Indians. But this is vague and general. I want something specific and distinct. Did they, after making a long series of treaties with the Indian tribes, fixing boundaries, accepting cessions, and guarantying unceded lands, did they turn round, declare those treaties null, break down the boundaries and seize upon the land, in time of profound peace, and under the pretence that the treaties were unconstitutional? This is the kind of precedent wanted; not one resting in mere political metaphysics.

But grant they did all this, (no part of which they did) and grant they did it, as independent States, before the Constitution of 1789. All this would not help the argument. The States, under the confederation, were clothed with many attributes of sovereignty, which they gave up on entering the Union. They coined money, enacted navigation laws, imposed tariffs to protect manufactures. The right to treat with the independent tribes of Indians was not one of the rights ceded to the States, although conflicts existed between the Congress and some of the States as to the extent of their power in this respect. But all the sovereign powers I have enumerated were given up by the States in adopting the Constitution. When Georgia adopted the Constitution, the treaty of Hopewell was in existence, containing the most decisive guaranties of the rights of the Cherokees. Before the constitution, Georgia claimed the right of treating with the Indians; but afterwards never. She frequently has requested the United States to treat for her benefit, and the United States have done it. And now the argument is, that Georgia has a right to annul all these treaties, because in former times, the colonies or the States extended their laws over the Indians!

But it is said that the late administration pursued the same policy of removing the Indians, and the friends of that administration are charged with inconsistency in now opposing it. No one denies, that the late administration earnestly desired the removal of the Indians. It saw, what every body sees, the inconveniences incident to the residence of the southwestern tribes in the neighborhood of the States, so resolutely bent on acquiring their lands. It is well known that the project of colonizing them west of the Mississippi, was submitted by Mr Monroe to Congress, near the close of his administration, and again with some modifications by Mr Adams in 1828. But it is a matter of equal notoriety, that neither the last administration, nor that which preceded it, contemplated the attainment of this object in any other way, than by the joint and voluntary co-operation of the Indians themselves and the United States. The idea that the States could annul the treaties was never countenanced by the late President for a moment. It cannot surely be forgotten in what emphatic language, on a very trying occasion, Mr. Adams avowed his resolution to support the Indians in the rights secured to them by treaty and by law.

Georgia had passed a law authorizing the survey of a portion of Creek lands, ceded by the treaty of the Indian Springs, which the Senate of the United States had annulled, and not ceded by that of Washington. Mr. Adams immediately ordered the arrest and prosecution of the Surveyors. Georgia declared a determination to support her surveyors by military force; and the President submitted the subject to Congress. In the Message sent for that purpose, he used this language: It ought not, however, to be disguised, that the act of the Legislature of Georgia, under the construction given to it by the Governor of that State and the surveys made or attempted by his authority beyond the boundary secured by the treaty of Washington of April last to the Creek Indians, are in direct violation of the supreme law of this land, set forth in a treaty, which has received all the sanctions provided by the Constitution, which we have sworn to support and maintain. In the present instance, it is my duty to say, that if the legislative and executive authorities of the State of Georgia should persevere in acts of encroachment upon the territories secured by a solemn treaty to the Indians, and the laws of the Union remain unaltered, a superadded obligation, even higher than that of human authority, will compel the Executive of the U. States to enforce the laws and fulfil the duties of the nation, by all the force committed for that purpose to his charge."

I may be permitted to add, that this message and other important documents in the Georgia controversy, were committed to a Select Committee of this House, of which I had the honor to be the Chairman, from which a Report proceeded supporting in all points the prin-

ciples laid down by the President in the Message I have just cited. It is obvious, therefore, that there is no foundation for the charge that the last administration was friendly to the policy of removing the Indians *as now pursued*. In fact, it is matter of surprise, that a charge so notoriously groundless should be adventured. Had Mr. Adams done what is now pretended; had he countenanced Georgia, Alabama, and Mississippi, in their policy, the South would never have been consolidated, as it was, against him; and I much doubt if the Chair of State would have been filled as it now is.

Sir, I think I have made out my case. I have shown that the Cherokee Indians have been invaded in the territory and rights, secured to them by treaty and by law. In addition to the particulars which I have mentioned, there are others set forth in their memorial, well deserving the consideration of the House. Most of these, for want of time, I must pass over; but on two of them I will dwell for a moment. Georgia has contended for a boundary line, under the treaty of the Indian Springs of 1825, (and in contravention of that of 1826 at Washington, by which the treaty of the Indian Springs was annulled) which would take a million of acres of land from the Cherokees. The ground of this claim on the part of Georgia is, that the ancient boundary between the Creeks and the Cherokees was greatly to the north of the recent boundary; and that the Creeks and Cherokees, by compact between themselves, had no right to change it. If this were true, it would not affect the case, because the treaty of the Indian Springs, which gave Georgia all the Creek lands, being fraudulent in itself, could never have given any rights, and was solemnly annulled by the Senate, *the present Secretary of War voting in favor of annulling it.* Nevertheless, passing by the treaty of Washington, which fixed the boundary, and acting under that of the Indian Springs, which the Senate declared void, the President has undertaken to settle a new boundary, equally to the dissatisfaction of the Cherokees and Georgia; and has actually dispossessed the Cherokees, by a simple executive order, enforcing a treaty declared by the Senate to be fraudulent, null, and void, of 464,646 acres of land; occupied as they allege by their tribe for generations.

I might also speak of the countenance which has been given to intruders, in establishing themselves on lands vacated by the emigrants to Arkansas, by which serious evils and constant vexations are occasioned to the Cherokees; but I forbear, for want of time, to dwell on the subject.

Nor is the order given last Summer, to change the mode in which the annuities are paid, less vexatious. It has been called, and I think with justice, a small business. The annuity due to the Cherokees amounts, I believe, to but 6666 dollars. It is by treaty due to the nation. Since the Cherokees took our advice, and established a regular Government, it has been paid to the Treasurer of the nation. It constitutes a considerable part of the little revenue of the tribe. The President has seen fit to order its payment to the Treasurer to be discontinued, and to be made hereafter to the Indians individually. It amounts to about forty-two cents for each of the population. It must of course be paid in specie. A part of the tribe live a hundred or two miles from the agency. Shall it be sent to them? Shall they travel this distance to receive their few cents? What is the object of this change? I have understood that it has been stated by the Secretary of War, in a letter published in the course of the last Summer, that complaints had been made, that some of the Indians are defrauded by their chiefs of their share. However this may be with other tribes, to which the same change extends, and of this I know nothing, I believe it is not so with the Cherokees. I have seen a letter from Mr Montgomery, the Cherokee agent, dated last October, in which he declares that no such complaint has ever come to his knowledge. I hope there is no reason for the suggestion which has been made on very good authority, that this change in the mode of paying the annuities has been ordered, to deprive the Cherokee Government of the funds necessary to enable them to carry on the arduous and discouraging contest in which they are now involved with the Executive authorities of the United States and with Georgia.

I have confined myself, for the reasons stated in the outset, almost entirely to the case of the Cherokees. There is a memorial from the Creeks on our tables, from which it would appear, that they suffer from the same policy. They are overrun with intruders, whom the Government of the United States does not remove; and the legislation of Alabama has been extended over them. I find the following account of it in a letter, apparently by a member of the Legislature of Alabama: "Tuscaloosa, (Al.) 9th January. The Indian bill, which has been passed in the House of Representatives, provides for extending over the different tribes within the territorial limits, the civil and criminal laws of the State, prohibiting them from enacting or executing any laws of their own—taxes their black population between the ages of twelve and sixty, with a poll tax of fifty cents. The Choctaw and Chickasaw nations are, however, to be exempt from the operations of this act, so soon as the treaty concluded by their respective nations with the United States shall have been ratified by the Senate. This was a favorite amendment of mine, and it was all I could do to soften, in this very small degree, the rigor of the law." *

* Since this Speech was delivered, I have understood that bills have been introduced in both branches of the Legislature of Alabama, to repeal the law extending the jurisdiction of the State over the Indians; with what success I am uninformed.

With the Chickasaws and Choctaws, treaties have been concluded under the law of last session, and, as I will demonstrate, *in direct violation of its provisions.*

Let me revert a moment to the history of the proviso contained in that law. The President's message took the ground, that the Indians could not be protected against the legislation of the States. The reports of the Committees on Indian Affairs, in the two Houses, took the same ground. The bill did not directly grapple with that point; but on both sides of the House, that was the point argued; and the great objection to the bill was, that it played into the hands of that policy. The House, as the event proved, was nearly *in equilibrio:* the bill passed by a vote of 102 to 97. In this state of division in the House, the gentleman from Pennsylvania (Mr. Ramsay,) moved an amendment, which prevailed. It provided "that nothing in this act contained should be construed, as authorizing or directing the violation of any treaty between the United States and any Indian tribe." Without this proviso, I am persuaded the bill could not have passed.

By this clause, the House solemnly provided that the treaties were constitutional, and could not be violated; and if, as it would seem, the President thinks them unconstitutional, I do not understand how he could sign the bill. He thought proper, by a special message, to guard the House against even construing a law passed at the last session, in a sense deemed by him unconstitutional; and, in appending his signature to it, it would appear that he has endorsed, upon the official roll of the law a sort of qualifying reference to that message; an entirely novel, singular, and, as I think, unconstitutional step. In this case, he signs a bill, in which the constitutionality of the treaties is expressly recognized, although he deems them all null and inoperative.

With this act in his hand, and the half million in his pocket, the Secretary goes down to the Chickasaws and Choctaws, tells them that the President will not protect them from the legislation of the States, and "under these circumstances," negotiates the new treaties. These treaties have not been submitted, (not being as yet ratified,) to the House of Representatives. From the best sources of information to which I have had access, I have been led to the opinion, that the tone of the Secretary's communications with the Choctaws, was of the most urgent and imperative character.

No one denies that the extension of State laws over the tribes is, of itself, a violation of all the treaties; but in the case of the Choctaws, there were peculiar provisions in their treaties, which are contravened and broken. By the treaty of Doak's Stand, negotiated with that tribe, in 1820 by the present Chief Magistrate and the worthy gentleman (Gen. Hinds) who now represents the State of Mississippi, it was in the fourth article, stipulated as follows:

"The boundaries hereby established between the Choctaw Indians and the United States on this side of the Mississippi river, shall remain without alteration, until the period at which said nation shall become so civilized and enlightened as to be made citizens of the United States, and Congress shall lay off a limited parcel of land for the benefit of each family and individual in the nation."

Some uneasiness on the part of the Choctaw nation appears to have been produced by this stipulation; and it was accordingly, in the treaty with the Choctaws, negotiated at Washington in 1825, farther provided, "that the fourth article of the treaty aforesaid shall be so modified, as that the Congress of the United States shall not exercise the power of apportioning the land, for the benefit of each family or individual of the Choctaw nation, and of bringing them under the laws of the United States, *but with the consent of the Choctaw nation!*"

So unequivocal was the condition of the Choctaws, under these treaties, that the State of Mississippi decided, in 1826, that they had not a right to legislate for their own citizens, wandering into the Choctaw nation, fugitives from the justice of the State.

In the face of these treaties, in the face of the proviso of the law, under which he was acting, refusing expressly to authorize their violation, the Secretary goes to the Choctaws, tells them in substance that the old treaties will be regarded by the Executive of the United States as unconstitutional, and *knowing that their consent to remove depends upon this one fact and no other,* he assures them the President will not enforce the treaties, and under these circumstances induces a portion of them, (how large a portion I know not,) to cede the lands of the nation. To effect this object, there is great reason to believe that very large temptations were offered to the individuals possessing influence in the tribe.

Now I say the law of the last session was conditional; and the appropriation contained in it was conditionally made.

The condition was that the Treaties should not be violated.

It is known to every gentleman in the House, that the sole consideration, which induced the Choctaws to agree to remove, was the assurance of the Secretary, that the Government of the United States would not protect them from the violation of the treaties.

It is unnecessary to press this matter much farther. I have stated most of the grounds, on which I rest the propriety and expediency of adopting my motion.

It is admitted by the States, that they consider these treaties as unconstitutional, and act accordingly.

The President acquiesces in this course on the part of the States, although it is his sole duty in reference to this matter to enforce the law, of which these treaties are a part:

Congress last winter made express provision against their violation.

They are violated. Let us then either make provision to execute, or let us abrogate them avowedly.

It is due to consistency, good faith, and common honesty.

The President has, with his annual message, sent us a letter from the Superintendent of the Bureau of Indian Affairs, in which that officer states, that the law of 1802, "is the principal one which governs all our relations with the Indian Tribes," and recommends its revisal and modification to suit the changes produced by subsequent treaties and other causes. The same message is accompanied by the letter from the Secretary of War, to which I have already referred; telling us that the provisions of that law are unconstitutional, and the President neglects to enforce them in favor of those tribes, over which the States have extended their laws.

Let us then, the Congress of the United States, if we think this law is constitutional, make provision to execute it; if we think it is defective, let us amend it. If we think it is unconstitutional, let us repeal it. That law, by which all our Indian relations are regulated, ought not surely to remain in its present state.

If the treaties are constitutional, let us enforce them. If they are unconstitutional, let us abrogate them; let us repeal the proviso of the last Session; declare them null and void; and make what compensation we can to the deluded beings, who, relying upon our faith, have, at different periods, ceded to us mighty and fertile regions, as a consideration for the guaranty contained in these compacts.

Sir, this is a dreadful affair. Heaven is my witness, that I would rather palliate than magnify its character; but I can think of nothing so nearly parallel to it, as the conduct of the British Government towards the native inhabitants of St. Vincents. This is a precedent from one of the worst periods of the British Government; that of the Administration which drove America into revolution. It was a transaction on a small scale, in an obscure Island, and toward a handful of men. But it left an indelible stigma on those responsible for it; a stigma on an administration, which nothing moderately unjust could disgrace; a stigma, which would have been as notorious as it was indelible, but for the overshadowing enormity of the treatment of America, which succeeded. If we proceed in this path, if we now bring this stain on our annals, if we suffer this cold and dark eclipse to come over the bright sun of our national honor, I see not how it can ever pass off; it will be as eternal as it is total.

Sir, I will not believe that Georgia will persevere. She will not, for this poor corner, scarcely visible on the map of her broad and fertile domains, permit a reproach to be cast upon her and the whole Union, to the end of time.

As for the character of the country to which it is proposed to remove the Indians, I want only light. It was all we asked last session; all I ask now. I quoted then all the authorities, favorable as well as unfavorable, with which I was acquainted. The friends of the policy refused us the only means of getting authentic information on the subject—a commission of respectable citizens of the United States sent out for the purpose. Since the subject was discussed last session, two more witnesses, not then heard, have spoken. Dr. James, who was appointed to accompany Col. Long on his tour of exploration in this region, has thus expressed himself:

"The region to which Mr McCoy proposes to remove the Indians, would, such is its naked and inhospitable character, soon reduce civilized men who should be confined to it, to barbarism."

In 1827, before this question was controverted, a report was made by the commissioners appointed to lay out a road from the western boundary of Missouri to Santa Fe in New Mexico. These commissioners report, that, in the whole line of their march, extending seven hundred miles, if all the wood which they passed were collected into one forest, it would not exceed a belt of trees three miles in width!

But all this does not change the question. It merely suggests the possibility of an alternative of evil. If *all* the land were as fertile, as some small part of it probably is; if it were as safe from the wild tribes of the desert, as it is notoriously exposed; if wood and water were as abundant as they are confessedly scarce; if it were the paradise, which it is not; so much the worse for the Indians, the miserable victims whom we are going to delude into it. The idea that they can there be safe, is perfectly chimerical; and every argument to show that the land is good, is an argument of demonstration that they will soon be driven from it. If all these treaties cannot save them, nothing can. What pledges can we give stronger than we have given?

It is partly for this reason that I urge the House to settle the question; and the more plainly we meet it, if we settle it against the Indians, the more humane will be our conduct. If we intend to be faithless to all these compacts, let our want of faith be made as signal and manifest as it can be.

Here, at the centre of the Nation, beneath the portals of the Capitol, let us solemnly auspicate the new era of violated promises and tarnished faith. Let us kindle a grand coun-

cil-fire, not of treaties made and ratified, but of treaties annulled and broken. Let us send to our archives for the worthless parchments, and burn them in the face of day. There will be some yearnings of humanity, as we perform the solemn act. They were negotiated for valuable considerations; we keep the consideration and break the bond. One gave peace to our afflicted frontier; another protected our infant settlements. Many were made when we were weak; nearly all at our earnest request. Many of them were negotiated under the instructions of Washington, of Adams, and of Jefferson—the Fathers of our liberty. They are gone, and will not witness the spectacle; but our present Chief Magistrate, as he lays them, one by one, on the fire, will see his own name subscribed to a goodly number of them.

Sir, they ought to be destroyed, as a warning to the Indians to make no more compacts with us. The President tells us that the Choctaw treaty is probably the last which we shall make with them. This is well; though, if they remain on our soil, I do not see how future treaties are to be avoided. But I trust it is the last we shall make with them; that they will place themselves beyond the reach of our treaties and our laws; of our promises, and our mode of keeping them.

There is one sad alleviation of the fate of some of these tribes. When the possessions of the rural population of Italy were parcelled out among the Roman legions, by a policy too similar to that which we are now pursuing towards the Indians, it was the pathetic inquiry of a poor shepherd, who was driven from his native soil, his cultivated farm, and the roof of his infancy,

> Impius hæc tam culta novalia miles habebit,
> Barbarus has segetes? En queis consevimus agros!

It will be some sad alleviation of the fate of these dependent allies, whom we are urging into the western wilderness, that their lands and their houses, their fields and their pastures, their civilized, improved, and Christian homes, will pass into the possession of their civilized and Christian brethren; who, I doubt not, will do their best to mitigate the bitterness of the cup. At some future day, should they escape the destruction which as I think impends over them beyond the Mississippi, some of their children will perhaps be moved by the desire to undertake a pious pilgrimage to the seats from which their fathers were removed. The children of the exile will not, I know, be turned unkindly from the door of the child of the "fortunate drawer." Here, they will say, are the roofs beneath which our parents were born, and for which our white brethren cast lots; here are the sods beneath which the ashes of our forefathers are laid; and there are the ruins of the Council House where the faith of our Great Father was solemnly pledged to protect us!

Sir, it is for this Congress to say, whether such is the futurity we will entail on these dependent tribes. If they must go, let it not be to any spot within the United States. They are not safe: they cannot bind us, they cannot trust us. We shall solemnly promise, but we shall break our word. We shall sign and seal, but we shall not perform. Let them go to Texas; let them join the Camanches; for their sakes and for ours; for theirs to escape the disasters of another removal; for ours, that we may be spared its shame.

Now, Sir, I have done my duty. I have intended nothing offensive to any man or body of men. I have aimed only to speak the truth, honestly and earnestly, but not opprobriously. If, in the heat of the moment, I have uttered any thing which goes beyond this limit, I wish it unsaid.

I am not without hopes that Congress will yet throw its broad shield over these, our fellow beings, who look to us for protection: being perfectly satisfied that, if the question could be presented free from all extraneous considerations to the decision of the House, it would be for the preservation of the treaties.

But however this may be, I am confident that the time is not far distant when the people will be all but unanimous in this matter. I believe that even now, could it be freed from all delusive coloring, and submitted to the mighty company in the Union, of sober, unprejudiced, disinterested men, their voice would reach us, like a rushing storm from Heaven. Rather than have this Hall made the theatre of such a disastrous violation of the National Faith, they would speak to us in a tone which would shake these massy columns to their base, and pile this canopy in heaps on our heads.